

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE:)
)
)

NEW ENGLAND COMPOUNDING PHARMACY, INC.) Multi-District Litigation
PRODUCTS LIABILITY LITIGATION,) Case No. 1:13-md-2419-RWZ
)
_____)

DECEMBER 2016 STATUS REPORT OF TORT TRUSTEE

Lynne F. Riley, Tort Trustee¹ under the Tort Trust dated June 4, 2015 created pursuant to the *Third Amended Joint Chapter 11 Plan of New England Compounding, Inc.* confirmed by the United States Bankruptcy Court for the District of Massachusetts on May 20, 2015, hereby submits a report on the status of claims processing, lien clearance and payments in the NECC National Settlement annexed hereto as Exhibit A.

Respectfully Submitted,

LYNNE F. RILEY, TORT TRUSTEE,

By her attorneys,

/s/ Timothy J. Durken

Michael J. Fencer (BBO No. 648288)
Timothy J. Durken (BBO No. 666720)
JAGER SMITH P.C.
One Financial Center
Boston, Massachusetts 02111
Telephone.: 617-951-0500
Facsimile: 617-951-2414
Email: mfencer@jagersmith.com
tdurken@jagersmith.com

Dated: December 8, 2016

¹ Capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to those terms in the *Third Amended Joint Chapter 11 Plan of New England Compounding, Inc.*

CERTIFICATE OF SERVICE

I, Timothy J. Durken, hereby certify that on the date set forth above I caused true copies of the foregoing document to be served through the Court's CM/ECF system upon all registered electronic filers appearing in this case.

/s/ Timothy J. Durken

Timothy J. Durken

Exhibit A

STATUS OF CLAIMS PROCESSING, LIEN CLEARANCE AND PAYMENTS IN THE NECC NATIONAL SETTLEMENT

A. Adjudication of Claims by the National Claims Administrator.

A total of 2,340 claims have been filed by victims with Epiq, the National Settlement Administrator. Of these, 1,981 have been fully or partially approved by Epiq and 359 claims were provisionally denied. Of the 1,981 approved claims, 1,912 are eligible to receive a lien package, 34 have been provisionally approved but not the subject of a final determination, 15 are still subject to an appeal to Judge Neiman, 17 are subject to a discrepancy in data preventing receipt of accurate lien information from either Medicare or Medicaid, and 2 have been withdrawn. Of the 359 claims that were provisionally denied by Epiq, 177 received notice of a final denial, 78 applied for and were approved under a new base point category and will receive final determination letters after all other claims are resolved, 34 are still within the 90-day eligibility window to cure the source of the denial, and 70 responded with additional information. These 70 have been reviewed and Epiq is in the process of sending final determination letters.

B. Status of Appeals to Judge Neiman.

72 claimants originally filed appeals of their final determination with Judge Neiman, the Court-appointed Appeals Administrator. As of November 18, 2016, Judge Neiman issued decisions on 34 of the filed appeals. Judge Neiman is hopeful he will be able to resolve the remaining appeals before the end of the year.

C. The Tort Trustee's Efforts to Resolve Claims Asserted by Public and Private Entities for Reimbursement of Health Care Costs.

a. Claims for health care cost reimbursement.

As required under federal law, the Tort Trustee submitted the required information on proposed payments to approved claimants to the Center for Medicare Services ("CMS") who promptly returned Medicare eligibility information on each claimant. Information on each approved claimant was provided to the various state Medicaid agencies through a third party, the Garretson Resolution Group ("Garretson"), to determine if those agencies have claims for medical expenses involving these claimants. As of November 22, 2016, State Medicaid eligibility results have been received for over 95% of all approved claimants. In addition to

receipt of lien information from Medicare and Medicaid, the Tort Trustee has also received claims for health care cost reimbursement from various private entities.

b. Lien packages have been issued to 1,912 approved claimants and their attorneys

Substantial progress has been made on the issuance of lien letters and accompanying certifications and opt-out forms to finally approved claimants. As of December 1, 2016, the Tort Trustee, with the assistance of her staff, attorneys, and certain staff of members of the PSC, has issued lien letter packages to all of the 1,912 claimants eligible to receive a lien package. An identical lien package was sent to counsel for each represented claimant.

A lien package was issued for the 5% of finally approved claimants for whom the Tort Trustee has not yet received lien information from a state Medicaid agency. Those claimants were informed that, subject to their return of the properly executed certification and other forms, they would be sent their initial payment, and that if subsequent data from their state's Medicaid reporting agency indicated a claim for reimbursement, then the Medicaid lien would need to be satisfied through future settlement payments, or otherwise.

c. Payments to Finally Approved Claimants.

As claimants return properly executed certifications and other forms, claims for reimbursement by public and private entities are thereby cleared. Under the lien resolution agreement with Medicare, Medicare must then provide its final approval for the issuance of initial payments within 5 business days. To date Medicare has typically provided its final approval within two business days. Once Medicare sends its final approval to the Tort Trustee, checks are being issued for a claimant's initial payment, typically within 24 hours.

To date, of the 1,912 lien packages sent by the Tort Trustee, approximately 570 claimants have responded by returning materials to the Tort Trustee. Of these, 490 claimants returned those materials fully and properly executed, while there has been some deficiency in the materials returned by approximately 80 claimants. The Tort Trustee is in the process of sending those claimants an additional letter asking them to cure the defect. Of the 490 claimants who returned properly executed documents to the Tort Trustee, 462 have been mailed a check for their initial payment and another 28 claimants' information has been submitted to Medicaid for final approval of their payment, pursuant to the lien resolution agreement with Medicare.

To date, funds disbursed to claimants by the Tort Trustee total \$7,312,834. Given the volume of lien packages that were issued throughout November, it is expected that many more claimants will return their certifications and other forms to the Tort Trustee in the coming weeks. The Tort Trustee has committed resources to ensure that any claimant who returns the properly executed materials to the Tort Trustee prior to December 15, 2016, and whose claim is cleared for payment by Medicare, will be issued a check for their initial payment prior to the end of the year. Every effort will be made to process initial payments by the end of the year for those returning materials after December 15, 2016, but given mail and other holiday delays, receipt of a check to these claimants before the end of the year cannot be assured.

D. Summary Chart

For the Court's convenience, the pertinent numbers set forth above are summarized in the chart below:

Adjudication of Claims		
Total Claims Filed:	2,340	
Total Approved Claims to Date	1,981	
Eligible to receive lien package	1,912	Complete as of December 1, 2016
Claims still under adjudication	34	Estimated completion by December 15, 2016
Subject of appeal to Judge Neiman	15	Estimated completion date December 31, 2016
Subject to data discrepancy	17	Estimated completion by December 15, 2016
Withdrawn	2	
Total Claims Provisionally Denied	359	
Fully and Finally Denied	177	
Approved under a new base injury category. Final determination letters	78	

must await resolution of all other claims.		
Still under consideration pending expiration of 90-day appeal period	34	
Re-reviewed upon expiration of 90-day appeal period. Final determination letters to be sent.	70	Completed by December 15, 2016

Lien Clearance and Payments to Finally Approved Claimants		
Number of Claimants eligible to receive lien package	1,912	
Number of Claimants Sent lien package	1,912	Completed December 1, 2016
Number of claimants responding to lien package to date	570	
Number of defective responses	80	
Number of complete responses	490	
Number of claimants mailed initial payment to date	462	
Number of claimant payments awaiting payment approval my Medicare	28	